

IN THE
Supreme Court of the United States
OCTOBER TERM, 1964

No. 992

PHILIP R. CONSOLO, *Petitioner*

v.

FEDERAL MARITIME COMMISSION
UNITED STATES OF AMERICA

and

FLOTA MERCANTE GRANCOLOMBIANA, S.A.
Respondents

On Petition for Writ of Certiorari to the United States Court
of Appeals for the District of Columbia Circuit

**SUPPLEMENTAL BRIEF OF RESPONDENT FLOTA
MERCANTE GRANCOLOMBIANA, S.A., IN OPPOSITION**

This Supplemental Brief is submitted in response to the "Memorandum For The Federal Maritime Commission And The United States". While affirmatively opposing the grant of certiorari with respect to certain substantive issues sought to be reviewed by Petitioner, the Government's Memorandum concludes that "we do not oppose" the granting of a writ of certiorari

limited to the issue of the Court of Appeals' jurisdiction under the Hobbs Act (5 U.S.C. § 1031 ff.).

Respondent Flota believes that this Court should have before it the full text of the Government's position as to the Court of Appeals' jurisdiction, as stated to that Court in behalf of the United States and the Federal Maritime Board; it is therefore reprinted as Appendix A to this Supplemental Brief.* The United States and the Federal Maritime Board both urged to that Court that it exercise jurisdiction in all respects, as contrasted to the narrower position now asserted in behalf of the Government.

However, even in its latest Memorandum, the Government urges that the lower Court's disposition of the jurisdictional question was correct (pp. 6, 9).

This concession by the governmental respondents, coupled with their opposition to certiorari on the remaining issues, provides, we submit, the soundest possible reason for denying the writ. This Respondent has already been subjected to eight years of litigation in defense of a reparations claim which the Federal Maritime Board and Maritime Commission unanimously agreed was groundless in major part, and as to which the Court below held, after twice considering the case, that an award of reparations would be inequitable and an abuse of discretion. This Respondent should not be subjected to still further litigation, and this Court's docket still further crowded, simply to provide an occasion for the Court to render an ad-

* A true copy ("Reply of Respondents To Intervenor's Motion To Dismiss Or Require A Bond") has been filed with the clerk of this Court.

visory opinion upon an issue it is not required to decide.

Nor should the Government's present position with respect to the jurisdictional issue be regarded as a request that certiorari be granted. The Government's Memorandum emphasizes that neither the United States nor the Federal Maritime Commission itself petitioned for a writ of certiorari. In the "Memorandum in Opposition to Petitioner's Motion for Consolidated Oral Argument", filed in this case in behalf of the Interstate Commerce Commission and the United States, the Solicitor General concluded that "The Maritime Commission wishes also to note that it did not petition for a writ of certiorari, although its order was vacated by the judgment sought to be reviewed in No. 992". That Memorandum also emphasizes the differences in this case and the issue in *Interstate Commerce Commission v. Atlantic Coast Line R. Co.*, No. 606.

Any suggestion that the issue here may have a general importance is refuted by the fact that there has been a paucity of reparations awards under the Shipping Act—no more than five in its first 45 years of Administration, according to Petitioner (App. B to Flota's Brief in Opposition, p. 3a). The practical considerations of venue and procedure in review under the Shipping Act, applicable principally to ocean carriers in foreign commerce, as well as the governing review statutes, are considerably different from those under the Interstate Commerce Act, which applies to thousands of rail, motor, and inland water carriers, and reaches into every hamlet in the country.

CONCLUSION

The Petition for Writ of Certiorari should be denied in its entirety.

Respectfully submitted,

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